

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

PHILLIP COLEMAN	§	
v.	§	CIVIL ACTION NO. 9:06cv16 (Crim. No. 9:03cr22)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON MOVANT'S MOTION TO SET ASIDE THE JUDGMENT

The Movant Phillip Coleman filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. The case was referred to the United States Magistrate Judge, who ordered the Government to answer. The motion was denied on November 14, 2006.

However, Coleman subsequently notified the Court that he had not received a copy of the Report of the Magistrate Judge. The Court ordered that a copy of the Report be sent to him, and Coleman filed objections on December 20, 2006. These objections have been construed as a motion to set aside the judgment under Rule 59, Fed. R. Civ. P.

The Magistrate Judge ordered the Government to file a response to Coleman's motion to set aside the judgment. Coleman did not file a reply to the response. After review of Coleman's motion as well as the Government's response, the Magistrate Judge issued a Report on June 5, 2007, recommending that the motion be denied. A copy of this Report was sent to Coleman at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that the Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge dated June 5, 2007 (docket no. 21) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Movant's post-judgment objections to the Report (docket no. 18) are hereby construed as a motion to set aside the judgment under Rule 59, Fed. R. Civ. P., and such motion is hereby DENIED.

So **ORDERED** and **SIGNED** this **7** day of **July, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge